



UNITED STATES PATENT AND TRADEMARK OFFICE

UNITED STATES DEPARTMENT OF COMMERCE

United States Patent and Trademark Office

Address: COMMISSIONER FOR PATENTS

P.O. Box 1450

Alexandria, Virginia 22313-1450

www.uspto.gov

APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
09/872,216	05/31/2001	Robert D. Ainsworth	ACSL 79488 (G1605US01)	2384
7590 08/06/2008				
Gunther O. Hanke, Esq. FULWIDER PATTON LEE LLP Howard Hughes Center 6060 Center Drive, Tenth Floor Los Angeles, CA 90045				
EXAMINER				
ROZANSKI, MICHAEL T				
ART UNIT		PAPER NUMBER		
3768				
MAIL DATE		DELIVERY MODE		
08/06/2008		PAPER		

Please find below and/or attached an Office communication concerning this application or proceeding.

The time period for reply, if any, is set in the attached communication.

Office Action Summary

Application No.

09/872,216

Applicant(s)

AINSWORTH ET AL.

Examiner

MICHAEL ROZANSKI

Art Unit

3768

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --
Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 30 April 2008.
2a) ☒ This action is **FINAL**. 2b) ☐ This action is non-final.
3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 1-7, 10, 11, 14, 15, 18-27 and 29-35 is/are pending in the application.
4a) Of the above claim(s) _____ is/are withdrawn from consideration.
5) ☐ Claim(s) _____ is/are allowed.
6) ☒ Claim(s) 1-7, 10, 11, 14, 15, 18-27 and 29-35 is/are rejected.
7) ☐ Claim(s) _____ is/are objected to.
8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
10) ☐ The drawing(s) filed on _____ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
a) ☐ All b) ☐ Some * c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
2. ☐ Certified copies of the priority documents have been received in Application No. _____.
3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- 1) ☐ Notice of References Cited (PTO-892)
2) ☐ Notice of Draftperson's Patent Drawing Review (PTO-948)
3) ☒ Information Disclosure Statement(s) (PTO/SB/08)
Paper No(s)/Mail Date 4/30/08
4) ☐ Interview Summary (PTO-413)
Paper No(s)/Mail Date _____
5) ☐ Notice of Informal Patent Application
6) ☐ Other: _____

DETAILED ACTION

Claim Rejections - 35 USC § 102

The following is a quotation of the appropriate paragraphs of 35

U.S.C. 102 that form the basis for the rejections under this section made in this

Office action:

A person shall be entitled to a patent unless –

(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

(e) the invention was described in (1) an application for patent, published under section 122(b), by another filed in the United States before the invention by the applicant for patent or (2) a patent granted on an application for patent by another filed in the United States before the invention by the applicant for patent, except that an international application filed under the treaty defined in section 351(a) shall have the effects for purposes of this subsection of an application filed in the United States only if the international application designated the United States and was published under Article 21(2) of such treaty in the English language.

Claims 1-7,10-11,14-15,18-27, and 29-35 are rejected under 35

U.S.C. 102(e) as being anticipated by Swanson et al (US 6,445,939 -cited by Applicant).

Swanson et al disclose an optical probe including a guidewire 11 in which a single-mode optical fiber 1 is placed. The optical fiber 1 is rotatable within the housing 11 (col 13, lines 31-45). In another embodiment, the RFOJ 13, which causes rotation, is eliminated in favor of a longitudinal scanning mechanism used to "push-pull" the fiber back and forth (i.e. slideable) at a high speed past a transparent section (i.e. transparent window 24 for optically exposed configuration) in the housing 11 (col 16, lines 41-56). A distal tip coil 25 is bonded to the distal core section and allows the guidewire flexibility in navigating

tortuous pathways in the body. Therefore, the distal core section is flexible relative to the proximal core section (col 19, lines 15-19).

The probe is coupled to optical system 16 (see figure 8).

Claims 14 and 35 are rejected under 35 U.S.C. 102(b) as being anticipated by Gunderson et al (US 5,601,087 -cited by Applicant).

Gunderson et al disclose a system for diagnosing tissue including a therapeutic hollow guidewire 10, a single multi-mode optical fiber 20 disposed within the lumen of the guidewire, and a distal tip coil 16 bonded to the distal core section and a distal tip member 22 bonded to a distal end of the coil (col 5, lines 3-48; figure 1). The distal tip member 22 has an optically exposed configuration and may be a bead of epoxy, a lens, or an optically clear elastomer to provide the distal guidewire tip with a soft, flexible and conformable surface that is atraumatic (col 6, lines 7-49). Aside from the configuration using epoxy wherein the optical fiber is stabilized in the epoxy, the other configuration allow for the optical fiber to be slideably positionable within the distal tip coil. Further, it is disclosed that the fiber is threaded through a hollow tube 14 of the guidewire (col 5, line 6). The guidewire 10 may also be covered with a polymeric jacket coating, such as PTFE (col 6, lines 39-49). The apparatus is coupled to a data processing system for determining vessel and blood characteristics (see figure 5). The apparatus and methods of the invention may also be used to provide a 2D or 3D image of the area proximate the end of the guidewire in addition to the diagnostic information (col 7, lines 41-45).

Response to Arguments

Applicant's arguments with respect to claims 1-7,10-11,14-15,18-27, and 29-35 have been considered but are moot in view of the new ground(s) of rejection.

Conclusion

Applicant's amendment necessitated the new ground(s) of rejection presented in this Office action. Accordingly, **THIS ACTION IS MADE FINAL**. See MPEP § 706.07(a). Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

A shortened statutory period for reply to this final action is set to expire **THREE MONTHS** from the mailing date of this action. In the event a first reply is filed within **TWO MONTHS** of the mailing date of this final action and the advisory action is not mailed until after the end of the **THREE-MONTH** shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event, however, will the statutory period for reply expire later than **SIX MONTHS** from the date of this final action.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to **MICHAEL ROZANSKI** whose telephone

Art Unit: 3768

number is (571)272-1648. The examiner can normally be reached on Monday - Friday, 8-4:30.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Brian Casler can be reached on 571-272-4956. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free). If you would like assistance from a USPTO Customer Service Representative or access to the automated information system, call 800-786-9199 (IN USA OR CANADA) or 571-272-1000.

/Eric F Winakur/
Primary Examiner, Art Unit 3768

MR